

THOMAS F. BYRON  
ANNA B. PHILO

IBLA 81-12

Decided January 6, 1981

Appeal from a decision of the Alaska State Office, Bureau of Land Management, declaring appellants' placer mining claims Sylvia Nos. 1 through 4, abandoned and void. AA MC 19338-19341.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims:  
Abandonment--Mining Claims: Location--Mining Claims:  
Recordation

Under sec. 314 of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of mining claim, located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

APPEARANCES: Thomas F. Bryon and Anna B. Philo, pro sese.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Thomas F. Bryon and Anna B. Philo have appealed from the August 4, 1980, decision of the Alaska State Office, Bureau of Land Management (BLM), declaring appellants' four Sylvia placer mining claims (AA MC 19338-19341) abandoned and void.

The claims in question were located on June 14, 1978. BLM received copies of the notices of location on September 13, 1978, which was 91 days after the date of location. After receiving the documents, BLM declared the claims void, rejected the filings, and returned the documents to appellants. Claimants filed a timely appeal, alleging that the location notices were filed in the Seward Recording Office on July 24, 1978, and not returned to them by the State of Alaska until September 12, 1978, when it was too late to record with BLM. They also assert that they were unaware of the Federal deadline for filing.

[1] Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), requires the owner of an unpatented lode or placer mining claim located after October 21, 1976, to file a copy of the official record of the notice of location in the BLM office designated by the Secretary of the Interior within 90 days after the date of the location. It also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner and renders the claim void. Tod Anderson, 50 IBLA 66 (1980).

The pertinent regulation, 43 CFR 3833.1-2(b), provides as follows:

The owner of an unpatented mining claim, mill site, or tunnel site located after October 21, 1976, on Federal land shall file (file shall mean being received and date stamped by the proper BLM office), within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location \* \* \*.

The applicable regulation, 43 CFR 3833.4(a), provides: "The failure to file an instrument required by § 3833.1-2(a), (b), and § 3833.2-1 of this title within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill or tunnel site and it shall be void."

Where the owner of an unpatented mining claim located after October 22, 1976, fails to file a location notice with BLM within 90 days after the date of location, his claim is properly deemed conclusively to be abandoned and to be void. Beryl Rhodes, 46 IBLA 287 (1980). Ignorance of the requirements of the statute and regulations cannot serve to excuse noncompliance. Federal Crop Insurance v. Merrill, 332 U.S. 380 (1947); Robert W. Hansen, 46 IBLA 93 (1980).

There is no provision in the statute authorizing the Department to waive compliance and accept late filings or to reinstate claims which were not timely filed. Cleo May Fresh, 50 IBLA 363, 365 (1980).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing

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Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

